

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996:)	
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other Customer Information;)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the)	
Communications Act of 1934, As Amended)	
)	
2000 Biennial Regulatory Review --)	
Review of Policies and Rules Concerning)	CC Docket No. 00-257
Unauthorized Changes of Consumers')	
Long Distance Carriers)	

WORLDCOM COMMENTS

WorldCom, Inc. (WorldCom) respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking (Notice) in the above referenced dockets, released on July 25, 2002.

In the *Notice*, the Commission invited parties to comment on the CPNI implications when a carrier goes out of business, sells all or part of its customer base, or seeks bankruptcy protection. Additionally, the Commission also seeks to refresh the record on two issues raised in the *CPNI Order Further NPRM*.¹ Namely, the Commission is seeking supplementary comments on the FBI's request that the Commission regulate foreign storage of and foreign-based access to CPNI of U.S.

customers who use domestic telecommunications services. The Commission also seeks further comment on what additional safeguards and enforcement mechanisms are necessary to protect the confidentiality of carrier proprietary information (CPI).

As discussed below, in order for customer-base transfers to occur without disruption, the selling or exiting carrier must be permitted to provide the acquiring carrier with the relevant CPNI without having to obtain customer consent. With regard to CPI, the Commission should mandate that the local exchange carriers' (LEC) retail representatives be restricted from accessing the identity of a customer's current provider of a particular service, unless the LEC is the service provider or billing agent for that service. Finally, as discussed previously, the Commission does not have authority and, in any case, should decline to regulate the storage of domestic CPNI.

I. CPNI IS A NECESSARY ELEMENT OF CUSTOMER-BASE TRANSFERS.

The Commission seeks comment on carrier treatment of CPNI when a carrier transfers its customer-base to another carrier. In particular, the Commission seeks comment on (1) whether a carrier should be allowed to use and disclose CPNI, without customer consent, as part of the transition of its customer-base, (2) whether the carrier should be required to notify the customer of the disclosure, (3) whether carriers should be permitted to sell CPNI as an asset, (4) whether distinctions should be made based on service type, and (5) whether the acquiring carrier may rely on the customer approvals, related to the CPNI, obtained by the transferring carrier.²

¹ Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115 and 96-149, paras. 206-10 (Feb. 19, 1998)(*CPNI Order Further NPRM*).

² Notice, paras. 146-7.

The use and disclosure of CPNI without customer consent for the purpose of a customer-base transfer is consistent with section 222(c)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“the Act”).³ Section 222(c)(1) sets forth the circumstances under which a carrier may use, disclose, or permit access to CPNI without customer approval. In particular, it allows carriers to use, disclose or permit access to a customer’s CPNI for the provisioning of service from which the information is derived. When a carrier is selling a portion of its base, or exiting the market, the transfer of the affected customers to another carrier ensures that those customers will continue to receive their current service. In addition to the smooth transition of customers, the acquiring carrier needs to be able to offer the same quality of service, including customer service functions, that the selling carrier was able to provide. Customers will expect the acquiring carrier to have the necessary information to address service questions.

CPNI is essential for both the effectuation of the transfer of a customer-base from one carrier to another and for the continuation of the same quality of customer service. Yet individual customer consent is infeasible to obtain in these types of transactions. Consequently, for the practice of customer-base transfers to proceed undisrupted, the selling or exiting carrier must be permitted to continue to provide the acquiring carrier with the relevant CPNI without obtaining prior customer consent. As the Commission has found, the sale of a business, including the sale of a customer base, is a routine

³ 47 U.S.C. 222(c)(1).

business transaction.⁴ Therefore it is reasonable to consider this type of transaction as part of the existing customer relationship.⁵

In its *Carrier Change Streamlining Order*, the Commission already evaluated and determined the importance of customer-base transfers and the need for the transition to be smooth with no service disruptions. The Commission also acknowledged that “it is infeasible or difficult for the acquiring carrier to obtain authorization and verification from each individual subscriber in situations involving the sale or transfer of multiple customer accounts.”⁶ In order to ensure that these routine business practices are not needlessly inhibited, the Commission permits carriers to transfer customer-bases without obtaining individual subscriber consent for the change in service provider.⁷ Customer consent is infeasible to obtain regardless of the subject matter. If the Commission were to require customer consent to share or sell CPNI necessary for the transition of customers that are part of a customer-base transfer, the Commission would in effect be nullifying its *Carrier Change Streamlining Order* and implementing rules.

⁴ See First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129, FCC 01-156, para. 2 (rel. May 15, 2001)(*Carrier Change Streamlining Order*); See also Third Further Notice of Proposed Rulemaking, CC Docket Nos. 00-257 and 94-129, paras. 3 & 4 (rel. Jan. 18, 2001).

⁵ Customer-base transfers are distinguishable from instances where a carrier has “won” a customer, which the Commission considered in its *CPNI Order Further NPRM* and *Order on Reconsideration*. CPNI Order Further NPRM, para. 84; Order on Reconsideration and Petition for Forbearance, CC Docket Nos. 96-115 and 96-149, FCC 99-223, paras. 86-8 (rel. Sept. 3, 1999)(*Order on Reconsideration*). There the Commission found the sharing of CPNI with another carrier to initiate service was outside the scope of the existing customer relationship. Where a carrier has “won” a new customer, the customer’s previous service will not be disrupted by a carrier’s inability to properly transition the customer to its new service provider. Whereas, a carrier that acquires a customer-base is assuming the role of the customers’ previous service provider. Since the transferring carrier will no longer provide the affected service, if the acquiring carrier is unable to complete the transition the customer will be forced to quickly find a new provider or will no longer receive his or her current telecommunication services.

⁶ Carrier Change Streamlining Order, para. 4.

⁷ *Id.*, paras. 1 & 2. 47 C.F.R. 64.1120(e).

The Commission asks whether it should recognize any difference between service types in the application of its CPNI rules.⁸ Discontinuance of any type of telecommunications service is detrimental to consumers. Consistent with its finding in the *Carrier Change Streamlining Order*, the Commission should determine that there be no distinctions related to the treatment of CPNI during customer-base transfers based on service type.⁹ The Commission should allow the sharing of CPNI, without obtaining prior customer consent, to effectuate the transition of customers regardless of the service at stake.

In its *Notice*, the Commission also seeks comment on whether it should require the transferring carrier to notify its affected customers of the CPNI disclosure resulting from the sale or transfer of the customer-base.¹⁰ Unlike the acquiring carrier's customer notification regarding the change in providers, required by the *Carrier Change Streamlining Order*, customer notification regarding CPNI is unnecessary and will only serve to cause customer confusion. It is unnecessary because, as discussed above, consumers expect a carrier acquiring a customer-base to also obtain all the information that will assist it in the provision of the customer's service. Furthermore, requiring notification that consumers can not act upon will only cause confusion. The notices could not serve as some form of opt-out notice. As the Commission has acknowledged, carriers need immediate access to customer information to prepare for the transition.¹¹

⁸ Notice, para. 146.

⁹ Carrier Change Streamlining Order, para. 20.

¹⁰ Notice, para. 146.

¹¹ "We believe that, in most cases, sufficient subscriber list information will be available to the acquiring carrier and that it is unlikely that a carrier would consummate a purchase of a subscriber base without having *immediate* access to the subscriber list upon the closing of the purchase agreement. We are confident that carriers can, through normal business negotiations, make arrangements for the acquiring carrier to obtain the necessary information." Carrier Change Streamlining Order, para. 16 (*emphasis added*).

Requiring a carrier to abide by a 30-day waiting period would significantly delay or disrupt the service transition. In addition, consent for CPNI disclosure would be the obligation of the selling/exiting carrier, while the transfer notification is the obligation of the acquiring carrier.¹² Thus, such a requirement may result in two different notification letters being sent to the customer regarding the transition.

There are alternative means to protect consumers without risking disruption of service. Namely, the acquiring carrier could be obligated to obtain consent, consistent with Commission rules and the company's policies, for use, disclosure and access to the customer CPNI, rather than permit the acquiring carrier to rely on the consent obtained by the previous carrier. Accordingly, the acquiring carrier will be limited to using the CPNI within the total service approach until the carrier obtains the appropriate consent. Moreover, if one or more affected customers were to decide to use a different carrier prior to the transition, the acquiring carrier could be precluded from further use of those particular customer's CPNI. Whereas a carrier that began provisioning service to the end-user, but subsequently lost the customer, could use the information for winback purposes as permitted under the Commission's rules.

II. ACCESS TO A CARRIER'S IDENTITY SHOULD BE RESTRICTED.

The Commission has requested comments on what, if any, additional safeguards or enforcement mechanisms are necessary for the protection of carrier proprietary information (CPI).¹³ The Commission should mandate that local exchange carrier representatives, in particular sales and customer service representatives, be restricted

¹² Id. ["We conclude that the carrier acquiring a subscriber base should be responsible for notifying the affected subscribers."]

from accessing the identity of a customer's current provider of a particular service, unless the LEC is the service provider or billing agent for that service.

As the Commission has concluded, the information contained in a carrier change order submitted by a carrier is CPI.¹⁴ The identification of a customer's provider of service is information the LEC has learned solely from its role as a neutral executing carrier. It is not information the carrier learned through its provision of telecommunications services to the end-user, so it is not CPNI.¹⁵ Therefore, even if the LEC learns of a former customer's change in service provider by means independent of the carrier change order, the new carrier's identity is not information it can use in its winback marketing.

As CPI, the information is precluded from any use by the LEC unless the relevant carrier's consent has been obtained.¹⁶ Since the information is unrelated to the service the LEC provides the end-user customer, unless as stated above they are the service provider or billing agent, there is no legitimate need for the LEC retail representatives to have access to this information. Even when a LEC uses the information with the intent to assist the end-user, and not for the purpose of marketing, it often leads to customer confusion. For example, LECs often incorrectly tell customers that their provider is the wholesale provider in a toll reseller situation. If the LEC is not the provider, or billing agent for a carrier, the LEC should merely refer customers to their bill for information on

¹³ Notice, para. 145.

¹⁴ Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, FCC 98-334, para. 106 (rel. Dec. 23, 1998)(*Section 258 Order*).

¹⁵ The exception is when the executing carrier is also the provider of service to the end-user.

¹⁶ 47 U.S.C. 222(b)[“A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information *only* for such purpose...”](*emphasis added*).

their service provider. All bills are required to identify the service provider and provide contact information.¹⁷

III. THE COMMISSION SHOULD NOT REGULATE THE STORAGE OF CPNI.

The Commission wishes to refresh the record on an issue initiated by the Federal Bureau of Investigation (FBI).¹⁸ The FBI requested the Commission to mandate that the CPNI of U.S. domestic customers be exclusively stored in, and accessible from, the United States. Alternatively, the FBI advocated that customer consent be required prior to the foreign storage of the domestic CPNI of a particular U.S. based customer and that, nonetheless, carriers should be required to maintain a copy of all U.S. based customer's CPNI in the US. The latter is meant to ensure prompt availability pursuant to lawful authority.¹⁹

As WorldCom, (formerly MCI), previously addressed, Section 222 does not address storage and/or location of CPNI.²⁰ Therefore regulations restricting the location and/or storage of CPNI would be beyond the scope of this proceeding. Moreover, carriers offering domestic service are subject to the section 222 regulations with regard to the CPNI generated by that service, regardless of where the information is stored.²¹ There is no need, or authority, for the Commission to mandate a blanket prohibition on foreign storage.

¹⁷ See, 47 C.F.R. § 64.2401(a)(1) and (d).

¹⁸ Notice, para. 144.

¹⁹ See, Letter from John F. Lewis, Jr., Federal Bureau of Investigation, to William F. Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 96-115, dated Jul. 8, 1997.

²⁰ See Reply Comments of MCI Telecommunications Corporation, CC Docket Nos. 96-115 and 96-149, pp. 19-20, filed Apr. 14, 1998.

²¹ See, *Id.*

Moreover, if law enforcement agents have legal grounds to require access to CPNI, carriers will need to make the information available to them. There is no statutory language, or evidence of need, to support requiring carriers to maintain a copy of the data in a U.S. location to ensure compliance with law enforcement officials.

IV. CONCLUSION

As discussed above, the Commission should ensure carriers continue to have access to CPNI for the purpose of customer-base transfers, restrict LEC retail representatives' access to CPI and decline to regulate the storage of CPNI.

Respectfully submitted,

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